THE GREAT SPEECH

OF

HON. A. H. STEPHENS,

DELIVERED BEFORE

THE GEORGIA LEGISLATURE,

On Wednesday Night, March 16th, 1864,

TO WHICH IS ADDED EXTRACTS FROM

GOV. BROWN'S MESSAGE

TO THE

GEORGIA LEGISLATURE.

At the hour of 7½ o'clock, P. M., the Hall had been filled to its utmost capacity by members of the Legislature and citizens generally, and as the vast assemblage within saw the beloved form of Georgia's proud and noble son, every eye grew bright with joy, and a hearty and unanimous applause bid him welcome.

Mr. Stephens ascended the Speaker's stand and spoke as follows:

Gentlemen of the Senate and House of Representatives:

In compliance with your request, or at least with that of a large portion of your respective bodies, I appear before you to-night to speak of the state of public affairs. Never, perhaps, before, have I risen to address a public audience under circumstances of so much responsibility, and never did I feel more deeply impressed with the weight of it.—Questions of the most momentous importance are pressing upon you for consideration and action. Upon these I am to address you. Would that my ability, physically, and in all other respects, were commensurate with the magni-

tude of the occasion. We are in the midst of dangers and perils. Dangers without and dangers within. Scylla on the one side and Charybdis on the other. War is being waged against us by a strong, unscrupulous and vindictive foe; a war for our subjugation, degradation and extermination. From this quarter threaten the perils without. Those within arise from questions of policy as to the best means, the wisest and safest, to repel the enemy, achieve our independence, to maintain and keep secure our rights and liberties. Upon the decision of these questions, looking to the proper development of our limited resources, wisely and patriotically, so that their entire efficiency may be exerted in our deliverance, with, at the same time, a watchful vigilance to the safety of the citadel itself, as much depends as upon the skill of our commanders and the valor of our citizen soldiers in the field. Everything dear to us as freemen is at stake. An error in judgment, though springing from the most patriotic motives, whether in councils of war or councils of state, may be fatal. He, therefore, who rises under such circumstances to offer words of advice, not only assumes a position of great responsibility, but stands on dangerous ground. Impressed profoundly with such feelings and convictions, I should shrink from the undertaking you have called me to, but for the strong consciousness that where duty leads no one should ever fear to tread. Great as are the dangers that threaten us, perilous as is our situation—and I do not intend to overstate or understate, neither to awaken undue apprehension, or to excite hopes and expectations never to be realized—perilous, therefore, as our situation is, it is far, far from being desperate or hopeless, and I feel no hesitation in saying to you, in all frankness and candor, that if we are true to ourselves, and true to our cause, all will yet be well.

In the progress of the war, thus far, it is true there is much to be seen of suffering, of sacrifice and of desolation; much to sicken the heart and cause a blush for civilization and christianity. Cities have been taken, towns have been sacked, vast amounts of property have been burned, fields have been laid waste, records have been destroyed, churches have been desecrated, women and children have been driven from their homes, unarmed men have been put to death, States have been overrun and whole populations made to groan under the heel of despotism; all these things are seen and felt, but in them nothing is to be seen to cause

dismay, much less despair; these deeds of ruin and savage barbarity have been perpetrated only on the outer borders, on the coast, and on the line of the rivers, where, by the aid of their ships of war and gunboats, the enemy has had the advantage; the great breadth of the interior—the heart of our country—has never yet been reached by them; they have as yet, after a struggle of near three years, with unlimited means, at a cost of not less than four thousand millions of dollars (how much more is unknown) and hundreds of thousands of lives, been able only to break the outer shell of the Confederacy. The only signal advantages they have as yet gained have been on the water, or where their land and naval forces were combined. That they should have gained advantages under such circumstances, is not a matter of much surprise. Nations in war, like individual men or animals, show their real power in combat when they stand upon the advantages that nature has given them, and fight on their own ground and in their own element. The lion, though king of the forest, cannot contend successfully with the shark in the water. In no conflict of arms away from gunboats, during the whole war, since the first battle of Manassas to that of Ocean Pond, have our gallant soldiers failed of victory when the numbers on each side were at all equal. The farthest advance into the interior from the base and protection of their gunboats, either on the coast or the rivers, that the enemy has been able to make for three years was the late movement from Vicksburg to Meridian, and the speedy turn of that movement shows nothing more clearly than the difficulties and disadvantages attending all such; these things should be noted and marked in considering our present situation and the prospects of the future. In all our losses up to this time, no vital blow has ever been given either to our cause or our energies.—We still hold Richmond, after repeated efforts to take it, both by force and strategy. We still hold on the Gulf, Mobile, and on the Ocean front, Wilmington, Savannah and Charleston. These places have been, and are still held against the most formidable naval armament ever put afloat.

At Charleston the enemy seem to direct all their power, land and naval, that can be brought to bear in combination —all their energy, rancour and vengeance. "Carthago delenda est" is their vow as to this devoted city. Every means that money can command and ingenuity suggest, from the

hugest engines of war never before known to the fiendish resort of Greek fire, have been and are being applied for its destruction. For nearly nine months the city, under the skill of our consummate commander, his subordinates, and the heroic virtues of our matchless braves in the ranks, still holds out against all the disadvantages of a defence without suitable naval aid. That she may continue to hold out, and her soil never be polluted by the unhallowed foot print of her vandal besiegers, is, of course, the earnest wish of all. But even if so great a disaster should happen to us as the loss of Charleston, be not dismayed, indulge no sentiment akin to that of despair—Charleston is not a vital part. We may lose that place, Savannah, Mobile, Wilmington, and even Richmond, the seat of government, and still survive. We may lose all our strong places—the enemy may traverse our great interior as they have lately done in Mississippi, and we may still survive. We should, even under such calamities, be no worse off than our ancestors were in their struggle for independence. During the time that "tried men's souls" with them, every city on the coast, from Boston to Savannah, was taken by the enemy. Philadelphia was taken, and Congress driven away. South Carolina, North Carolina, portions of Georgia, Virginia, and other States, were overrun and occupied by the enemy as completely as Kentucky, Missouri, Louisiana, and Tennessee are now. Take courage from the example of your ancestors—disasters caused with them nothing like dismay or despair—they only aroused a spirit of renewed energy and fortitude. The principles they fought for, suffered and endured so much for, are the same for which we are now struggling—State Rights, State Sovereignty, the great principles set forth in the Declaration of Independence—the right of every State to govern itself as it pleases. With the same wisdom, prudence, forecaste and patriotism, the same or equal statesmanship on the part of our rulers in directing and wielding our resources, our material of war, that controlled public affairs at that time, in the camp and in the cabinet, and with the same spirit animating the breast of the people, devotion to liberty and right, hatred of tyranny and oppression, affection for the cause for the cause's sake ; with the same sentiments and feelings on the part of rulers and people in these days as were in those, we might and may be overrun as they were ; our interior may be penetrated by superior hostile armies, and our country

laid waste as theirs was, but we can never be conquered, as they never could be. The issues of war depend quite as much upon Statesmanship as Generalship; quite as much upon what is done at the council board as upon what is done in the field. Much the greater part of all wars, is business—plain, practical every day life business; there is in it no art or mystery or special knowledge, except good, strong, common sense—this relates to the finances, the quarter-master's and commissary's departments, the ways and means proper—in a word to the resources of a country and its capacities for war. The number of men that can be spared from production, without weakening the aggregate strength—the prospect of supplies, subsistence, arms and munitions of all kinds. It is as necessary that men called out should be armed, clothed, shod and fed, as that they should be put in the field—subsistence is as essential as men. At present we have subsistence sufficient for the year, if it is taken care of and managed with economy.—Upon a moderate estimate, one within reasonable bounds, the tithes of wheat and corn for last year were not less, in the States East of the Mississippi, (to say nothing of the other side,) than eighteen million bushels. Kentucky and Tennessee are not included in this estimate. This would bread an army of five hundred thousand men and one hundred thousand horses for twelve months, and leave a considerable margin for waste or loss. This we have without buying or impressing a bushel or pound. Nor need a bushel of it be lost on account of the want of transportation from points at a distance from railroads. At such places it could be fed to animals, put into beef and pork, and thus lessen the amount of these articles of food to be bought. Upon a like estimate the tithe of meat for the last year will supply the army for at least six months—rendering the purchase of this article necessary for only half the year—the surplus in the country, over and above the tithes, is ample to meet the deficiency. All that is wanting is men of business capacity, honesty, integrity, economy and industry in the management and control of that department. There need be no fear of the want of subsistence this year, if our officials do their duty. But how it will be next year, if the policy adopted by Congress, at its late session, is carried out, no one can safely venture to say.

This brings me to the main objects of this address, a review of those Acts of Congress to which your attention has

been specially called by the Governor, and on which your action is invoked—these are, the currency, the military and the habeas corpus suspension acts. It is the beauty of our system of government, that all in authority are responsible to the people. It is, too, always more agreeable to approve than to disapprove what our agents have done. But in grave and important matters, however disagreeable or even painful it may be to express disapproval, yet sometimes the highest duty requires it. No exceptions should be taken to this when it is done in a proper spirit, and with a view solely for the public welfare. In free governments men will differ as to the best means of promoting the public good. Honest differences of opinion should never beget ill feelings, or personal alienations. The expressions of differences of opinion do no harm when truth alone is the object on both sides. Our opinions in all such discussions of public affairs should be given as from friends to friends, as from brothers to brothers, in a common cause. We are all launched upon the same boat, and must ride the storm or go down together. Disagreements should never arise, except from one cause—a difference in judgment, as to the best means to be adopted, or course to be pursued, for the common safety. This is the spirit by which I am actuated in the comments I shall make unpon these Acts of Congress.

As to the first two of these measures, the Tax Act and Funding Act, known together as the financial and currency measures, I simply say, in my judgment, they are neither proper, wise or just. Whether in the midst of conflicting views, in such diversity of opinion and interest, anything better could be obtained, I know not—perhaps not.—With that view we may be reconciled to what we do not approve. It is useless now to go into discussions of how better measures might have been obtained, or how bad ones might have been avoided—the whole is a striking illustration of the evils attending first departures from principle—the "facilis descencus Averno." Error is ever the prolific source of error. Our present financial embarrassments had their origin in a blunder at the beginning, but we must deal with the present, not the past. These two Acts make it necessary for you to change your legislation to save the State from loss. As to the course you should adopt to do this, I know of none better than that recommended by the Governor. His views and suggestions on this point seem to be proper and judicious.

The Military Act by which conscription is extended so as to embrace all between the ages of seventeen and fifty, and by which the State is to be deprived of so much of its labor and stripped of the most efficient portion of her enrolled militia, presents a much graver question. This whole system of conscription I have looked upon from the beginning as wrong, radically wrong in principle and policy. Contrary opinions, however, prevailed. But whatever differences of opinion may have been entertained as to the constitutionality of the previous Conscript Acts, it seems clear to my mind that but little difference can exist as to the unconstitutionality of this late act. The act provides for the organizing of troops of an anomalous character—partly as militia and partly as a portion of the regular armies. But in fact, they are to be organized neither as militia or part of the regular army. We have but two kinds of forces, the regular army and the militia—this is neither. The men are to be raised as conscripts for the regular forces, while their officers are to be appointed as if they were militia. If they were intended as militia, they should have been called out, through the Governor, in their present organizations —if as regular forces they cannot be officered as the act provides. It is most clearly unconstitutional. Who is to commission these officers? The Governor cannot, for they are taken from under his control; the President cannot constitutionally do it, for he can commission none except by and with the advice and consent of the Senate. It is for you to say whether you will turn over these forces, and allow them to be conscripted, as is provided, leaving the question of constitutionality for the courts, or whether you will hold them in view of agricultural and other interests, or for the execution of your laws, and to be called out for the public defense in case of emergency by the Governor when he sees the necessity, or when they are called for as militia by the President. The Act upon its face, in its provisions for details, seems to indicate that its object is not to put the whole of them in the field. Nothing could be more ruinous to our cause if such were the object and intention and should it ever be carried into effect. For if all the white labor of the country, from seventeen to fifty—except the few exceptions stated—be called out and kept constantly in the field, we must fail, sooner or later, for want of subsistence and other essential supplies. To wage war successfully, men at home are as necessary as men in the field. Those in the field

must be provided for, and their families at home must be provided for. In my judgment, no people can successfully carry on a long war, with more than a third of its arms-bearing population kept constantly in the field, especially if cut off by blockade, they are thrown upon their own internal resources for all necessary supplies, subsistence and munitions of war. This is a question of Arithmetic on well settled problems of political economy. But can we succeed against the hosts of the enemy unless all able to bear arms up to fifty years of age are called to and kept in the field? Yes, a thousand times, yes, I answer, with proper and skillful management. If we cannot without such a call, we cannot with it, if the war last long. The success of Greece against the invasion by Persia—the success of the Netherlands against Philip—the success of Frederic against the allied powers of Europe—the success of the Colonies against Great Britain, all show that it can be done. If our only hope was in matching the enemy with equal numbers, then our case would be desperate indeed. Superior numbers is one of the chief advantages of the enemy. We must avail ourselves of our advantages. We should not rely for success by playing into his hand. An invaded people have many advantages that may be resorted to to counterbalance superiority of numbers. These should be studied, sought and brought into active co-operation. To secure success, brains must do something as well as muskets.

Of all the dangers that threaten our ultimate success, I consider none more imminent than the policy embodied in this Act, if the object really be, as its broad terms declare, to put and keep in active service all between the ages of seventeen and fifty, except the exempts named. On that line we will most assuredly, sooner or later, do what the enemy never could do, conquer ourselves. And if such be not the object of the Act—if it is only intended to conscript men not intended for service, not with a view to fill the army, but for the officials to take charge of the general labor of the country and the various necessary avocations and pursuits of life, then the Act is not only wrong in principle but exceedingly dangerous in its tendency.

I come now to the last of these Acts of Congress. The suspension of the writ of habeas corpus in certain cases.—This is the most exciting, as it is by far the most important question before you. Upon this depends the question, whether the courts shall be permitted to decide upon the

constitutionality of the late Conscript Act, should you submit that question to their decision, and upon it also depend other great essential rights enjoyed by us as freemen. This Act, upon its face, confers upon the President, the Secretary of War, and the General commanding in the Trans-Mississippi Department, (the two latter acting under the control and authority of the President) the power to arrest and imprison any person who may be simply charged with certain acts, not all of them even crimes under any law; and this is to be done without any oath or affirmation alledging probable cause as to the guilt of the party. This is attempted to be done under that clause of the Constitution which authorizes Congress to suspend the privilege of the writ of habeas corpus in certain cases.

In my judgment, this act is not only unwise, impolitic and unconstitutional, but exceedingly dangerous to public liberty. Its unconstitutionality does not rest upon the idea that Congress has not got the power to suspend the privilege of this writ, nor upon the idea that the power to suspend it, is an implied one, or that clearly implied powers are weaker as a class and subordinate to others positively and directly delegated.

I do not understand the Executive of this State to put his argument against this Act upon any such grounds. He simply states a fact, as it most clearly is, that the power to suspend at all is an implied power. There is no positive, direct power delegated to do it. The power, however, is clear and clear only by implication. The language of the Constitution, that "the privilege of the writ of habeas corpus shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it," clearly expresses the intention that the power may be exercised in the cases stated; but it does so by implication only, just as if a mother should say to her daughter, you shall not go unless you ride. Here the permission and authority to go is clearly given. This and this only, I understand the Governor to mean when he speaks of the power being an implied one. He raises no question as to the existence of the power or its validity when rightfully exercised, but he maintains, as I do, that its exercise must be controlled by all other restrictions in the Constitution bearing upon its exercise. Two of these are to be found in the words accompanying the delegation. It can never be exercised except in rebellion or invasion. Other restrictions are to be found

in other parts of the Constitution. In the amendments to the Constitution adopted after the ratification of the words as above quoted. These amendments were made, as is expressly declared in the preamble to them, to add "further declaratory and restrictive clauses," to prevent misconstruction or abuse of the powers previously delegated. To understand all the restrictions, therefore, thrown around the exercise of this power in the Constitution, these additional "restrictive clauses" must be read in conjunction with the original grant, whether that was made positively and directly or by implication only. These instructions, among other things, declare that "no person shall be deprived of life, liberty or property without due process of law," and that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

All admit that under the clause as it stands in the original grant, with the restrictions there set forth, the power can be rightfully exercised only in cases of rebellion or invasion. With these additional clauses, put in as further restrictions to prevent the abuse of powers previously delegated, how is this clause conferring the power to suspend the privilege of the writ of habeas corpus, now to read? In this way, and in this way only: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." And no person "shall be deprived of life, liberty or property without due process of law." And further, "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

The attempted exercise of the power to suspend the privilege of the writ of habeas corpus in this Acts, is in utter disregard in the very face and teeth of these restrictions, as much so as a like attempt in time of profound peace would be in disregard of the restrictions to cases of rebellion and invasion, as the Constitution was originally adopted. It attempts to provide for depriving persons "of liberty, with-

out due process of law." It attempts to annul and set at naught the great constitutional "right" of the people, to be secure in their persons against "unreasonable seizures." It attempts to destroy and annihilate the bulwark of personal liberty, secured in our great chart to the humblest as well as the highest, that "no warrants shall issue but upon probable cause, supported by oath or affirmation," and "particularly describing the person to be seized." Nay more, it attempts to change and transform the distribution of powers in our system of government. It attempts to deprive the Judiciary Department of its appropriate and legitimate functions, and to confer them upon the President, the Secretary of War, and the General Officer commanding the Trans-Mississippi Department, or rather to confer them entirely upon the President, for those subordinates named in the Act hold their places at his will, and in arrests under this Act are to be governed by his orders. This, by the Constitution, never can be done. Ours is not only a government of limited powers, but each department, the legislative, executive and judicial, are separate and distinct. The issuing of warrants, which are nothing but orders for arrests against civilians or persons in civil life, is a judicial function. The President, under the Constitution has no power to issue any such. As commander-in-chief of the land and naval forces, and the militia when in actual service, he may order arrests for trials before Courts Martial, according to the rules and articles of war. But he is clothed with no such power over those not in the military service, and not subject to the rules and articles of war. This Act attempts to clothe him with judicial functions, and in a judicial character to do what no judge, under the Constitution, can do: issue orders or warrants for arrests, by which persons are to be deprived of their liberty, imprisoned, immured in dungeons, it may be without any oath or affirmation, even as to the probable guilt of the party accused or charged with any of the offences or acts stated. This, under the Constitution, in my judgment, cannot be done. Congress can confer no such power upon our Chief Magistrate. There is no such thing known in this country as political warrants, or "letters de catchet." This Act attempts to institute this new order of things so odious to our ancestors, and so inconsistent with constitutional liberty.

This act, therefore, is unconstitutional; not because Congress has not power to suspend the privileges of the writ of

habeas corpus, but because they have no power to do the thing aimed at in this attempted exercise of it. Congress can suspend the privilege of the writ—the power is clear and unquestioned—neither is the power, as it stands, objectionable. Georgia, in the Convention, voted against the clause conferring it in the Constitution as originally adopted—that, perhaps, was a wise and prudent vote. But, with the restrictions subsequently adopted, there can be no well grounded objection to it. It is, under existing restrictions, a wise power. In time of war, in cases of rebellion or invasion, it may often be necessary to exercise it—the public safety may require it. I am not prepared to say that the public safety may not require it now. I am not informed of the reasons which induced the President to ask the suspension of the privilege of the writ at this time, or Congress to undertake its suspension as provided in this Act. I, however, know of no reasons that require it, and have heard of none. But in the exercise of an undisputed power, they have attempted to do just what cannot be done—to authorize illegal and unconstitutional arrests—there can be no suspension of the writ, under our system of government, against unconstitutional arrests—there can be no suspension allowing, or with a view to permit and authorize, the seizure of persons without warrant issued by a judicial officer upon probable cause, supported by oath or affirmation—the whole Constitution must be read together, and so read and construed as that every part and clause shall stand and have its proper effect under the restrictions of other causes.

If any conflict arises between clauses in the original and the amendments subsequently made, the original must yield to the amendments as a will, previously made, always yields to a modifications of a codicil. Such, of course, was the condition of the old Constitution with its amendments, when the States of this Confederacy adopted it—and it was adopted by these States with the meaning, force and effect it then had. In construing, therefore, those parts of the old Constitution which we adopted, we stand just where we should have stood under like circumstances, under it. With these views it will clearly appear that, under our Constitution, Courts cannot be deprived of their right or be relieved of their duty to enquire into the legality of all arrests except in cases arising in the land and naval forces or in the militia, when in actual service—for the

government of which a different provision is made in the Constitution. Under a Constitutional suspension of the privilege of the writ all the Courts could do, would be to see that the party was legally arrested and held—upon proper warrant—upon probable cause, supported by oath or affirmation setting forth a crime of some violation of law. Literally and truly then the only effect of a Constitutional exercise of this power over the writ of habeas corpus by Congress, is to deprive a person, after being legally confined, of the privilege of a discharge before trial, by giving bail, or on account of insufficiency of proof as to probable cause or other like grounds. This privilege only can be suspended, and not the writ itself. The words of the Constitution are aptly chosen to express the purpose and extent to which a suspension can go in this country. With this view, the power is a wise one. It can work no serious injury to the citizen and it sufficiently guards the public safety. The party against whom a grave accusation is brought, supported by oath or affirmation, founded upon probable cause, must be held for trial, and if found to be guilty is to be punished according to the nature of his offence. The monstrous consequences of any other view of the subject are apparent. The exercise of the power by Congress may be either general or limited to special cases as in this instance. If it had been general under any other view what would have been the condition of every citizen in the land? The weaker would have been completely in the power of the stronger without remedy or redress. Any one in the community might seize for any motive or for any purpose, any other, and confine him most wrongfully and shamefully. Combinations of several against a few might be formed for a like purpose, and there would be no remedy or redress against this species of licensed lawlessness. The Courts would be closed—all personal security and personal safety would be swept away. Instead of a land of laws, the whole country would be no better than a White-friars domain—a perfect Alsatia.—This would be the inevitable effect of the exercise of the power, by a general suspension, with any other view of the subject, than this presented. The same effects as to outrages upon personal rights must issue under a limited suspension confined to any other view. No such huge and enormous wrongs can ever spring from our Constitution if it be rightly administered. So that the conclusion of the

whole matter is well stated by the Governor in his late Message, in the brief comprehensive, but exact terms—"The only suspension of the privilege of the writ of habeas corpus known to our Constitution and compatible with the provisions already quoted, goes to the simple extent of preventing the release, under it, of persons whose arrests have been ordered, under Constitutional warrants from Judicial Authority."

On this subject much light is to be derived from English history. Our whole system of Constitutional liberty rests upon principles established by our Anglo Saxon ancestors. But between their system and ours, there are several differences that should be noted and marked—and none more striking and fundamental than the difference between the two upon this subject. With them the right of personal security against illegal arrests, was wrested from the Crown by the Parliament, and established by Magna Charta, the bill of rights, the abolition of the star chamber, and the grant of the writ of habeas corpus, which is the means of redress against violations of law, and other wrongs against rights secured and acknowledged. In the abolition of the court of star chamber, the power was taken from the King, his heirs and successors forever, and every member of his privy council, to make any arrest of any person for any offense or alleged crime, except by due process of law. By this act, the power of the King to issue warrants or orders of arrest, unsupported by oath or affirmation, setting forth probable cause, which before, had been claimed as a royal prerogative, was taken away from him and his successors forever. The ruling monarch, Charles I, gave his consent to the act and yielded the power. He afterwards broke his pledge. Civil commotions ensued from this and other causes. He lost his head upon the block. The subsequent history of that strife between the people and the Crown of England, on this and other matter, is not now pertinent to the object before us. Suffice it to say that it ended in the settlement as it is termed between the Parliament and their new sovereigns, William and Mary, in 1688–'89. In this settlement, all the ancient rights and liberties of the English people, including the right of the writ of habeas corpus, were re-affirmed and secured. Such were the liberties inherited as a birth right, that our British ancestors brought with them to this continent. The principles established in England, after centuries of struggle and blood, formed

the basis upon which the great structure of American constitutional liberty was erected. But the striking difference between their system and ours to which I have alluded and which should never be lost sight of, is that with them, all power originally belonged to the Crown. All rights and liberties were grants from the Crown to the Parliament, and through them to the people, while with us all power originally belonged to the people—and essentially, still resides with them. They have appointed agents to perform the functions of government in the different departments, executive, judicial and legislative, under the form of government set forth in the Constitution, clothed with the exercise of certain delegated, specific and limited powers. In England it is competent for the Parliament at any time to return the Crown all the powers heretofore extorted from their kings. They can repeal any day Magna Charta, the habeas corpus act and the whole bill of rights, and render the ruling monarch as absolute as either of the Tudors or Stuarts ever claimed or wished to be. The principles of Magna Charta as to personal liberty and the right of the writ of habeas corpus to secure these rights are put in our fundamental laws, and cannot be violated by Congress, for their powers are limited, and they are themselves bound by the Constitution. That the British people would ever submit to a surrender of their rights by Parliament, no one can for a moment believe. But Parliament claims to be omnipotent and could make the surrender, if they chose to run the risk. Hence analogies between this country and that on the suspension of the writ of habeas corpus and the effect of such suspension, either generally or specially, should be closely scanned; even in England, so great is the regard for liberty, suspensions have been rare since the settlement of 1688–'89. The writ was suspended there in 1715 and in 1745—and in 1788 it was suspended in Ireland with the power conferred on the lord lieutenant to make arrests. Under the system of government in England, the Parliament could confer this power upon the Crown or the lord lieutenant, or upon any other person they saw fit.—Not so with our Congress, under our Constitution. In criticisms upon the Governor's Message, these suspensions have been alluded to against the positions of the message. They are not in conflict at all. What the Governor states is that he is not aware of any "instance in which the British King has ordered the arrest of any person in civil life in any other

manner than by judicial warrant issued by the established courts of the nation, or in which he has suspended or attempted to suspend the privilege of the writ of habeas corpus, since the bill of rights and the act of settlement passed in 1689." He did not say that Parliament had not suspended it, or that our Congress could not suspend it, in a proper way, but that even in England, where Parliament was unrestrained, they had not, since the settlement conferred upon the Crown, the power to make arrests, so far as he was aware.

At this point I will briefly refer to the suspension by our Congress, alluded to the other night by the distinguished gentleman, (Hon. A. H. Keenan,) who lately represented this district; a gentleman whose remarks I listened to with a great deal of interest, and whose personal friendship I esteem so highly. He referred to the Act of the Confederate Congress, passed October 13, 1862, and asked, Why were there no objections made to that? This Act he read. I have it before me. It provides that the "President, during the present invasion, shall have the power to suspend the privilege of the writ of habeas corpus in any city, town, or military district, whenever, in his judgment, the public safety may require it; but such suspension shall apply only to arrests made by the authorities of the Confederate government, or for offenses against the same," and in section 2d, that "the President shall cause proper officers to investigate the cases of all persons so arrested, in order that they may be discharged if improperly detained, unless they can be speedily tried in due course of law." The 3d section limits the Act to thirty days after the meeting of the next Congress.

The answer to the inquiry, why there was no noise made about this act, while there is so much made about the one lately passed, is two-fold. In the first place, this act applied "only to arrests made by the authorities of the Confederate government"—"for offenses against the same."—The proper authorities for issuing warrants to arrest are the courts, whose duty it is to issue warrants for arrests whenever offenses or crimes are charged upon oath or affirmation, stating probable cause. The section directing the President to cause "proper officers to investigate the cases," etc., in its immediate connection with the proceeding, had nothing in it calculated to awaken, alarm or excite objection, for by "proper officers" all naturally supposed judi-

cial officers only could be meant—judges who would or might act in discharging under writs of habeas corpus, if that privilege had not been suspended. In this connection these words seemed naturally enough to have a meaning far different from what they have when taken from their context and put into this late act, in which it is clear enough they are there intended to apply to other than judicial officers. There was not then, nor now, any objection, as far as I am aware of, to the suspension of the privilege of the writ of habeas corpus in any city, town, or district, or generally throughout the country, if Congress really has good reasons to believe the public safety requires it, and if the power to suspend be constitutionally exercised. The objection to the late act is that it attempts to do what cannot constitutionally be done.

But, in the second place, in answer to the inquiry, why no noise was made about the act of October, 1862, I need only say that upon the bare statement of the real and substantial objections to that act, it was admitted to be unconstitutional and void, because it attempted to confer the power to suspend upon the President, when, in his judgment, the public safety required it in the localities embraced in its terms. Congress alone, under the Constitution, has the power to suspend the privileges of the writ. They cannot confer this power upon the President or any body else. This is conclusively admitted both by Congress and the President in the late act, for it is set forth in the preamble, "Whereas, the power of suspending the privileges of said writ is vested solely in the Congress," etc. This is an admission on the record that the other act was unconstitutional and void. But, to my mind, it is just as clear that Congress cannot confer upon the President, or any other officer but a judicial one, the power to issue orders or warrants for the arrest of persons in civil life, as it was then, and on the passage of a similar act previously, that they could not confer the power upon the President to suspend the privilege of the writ of habeas corpus. The late act is just as void as the previous ones, and for a like reason. In it Congress has attempted to do what they had not power to do. The first act on the subject was assented to on the 27th Feb., 1862. That attempted to confer on the President the power not only to suspend the privilege of the writ of habeas corpus in certain cities, towns, military districts, etc., but to declare martial law, etc. This soon after was amended. But no one can say that during the progress of these events that I was silent. My sentiments upon the subject of martial law, against the unconstitutional usurpations of power, were proclaimed throughout the Confederacy, as they are now, and will be proclaimed against the dangerous departures from principle in this act. Martial law has been abandoned, and I trust the departures from principle in this act will be too. I speak upon these as I wrote upon those. I have no inclination to arraign the motives of those who disagree with me. Great principles are at stake, and I feel impelled by a high sense of duty, when my opinions are sought, to give them fully, clearly, and earnestly.

A few thoughts more upon the subject in another view These relate to the object and workings of the act, if it be sustained and carried out. You have been told that it affects none but the disloyal, none but traitors, or those who are no better than traitors, spies, bridge burners and the like, and you have been appealed to and asked if such are entitled to your sympathies? I affirm, and shall maintain before the world, that this act affects and may wrongfully oppress as loyal and as good citizens and as true to our cause, as ever trod the soil or breathed the air of the South. This I shall make so plain to you that no man will ever venture to gainsay or deny it. This long list of offenses set forth in such array in the thirteen specifications, are, as I view them, but rubbish and verbiage, which tend to cover and hide what in its workings will be found to be the whole gist of the act. Whether such was the real object and intention of its framers and advocates, I know not. Against their motives or patriotism I have nothing to say. I take the act as I find it. The whole gist of it lies, so far as appears upon its face, covered up in the fifth specification, near the middle of the act. It is embraced in the words—"and attempts to avoid military service."

Here is a plain indisputable attempt to deny every citizen in this broad land the right, if ordered into service, to have the question whether he is liable to military duty under the laws tried and adjudicated by the courts? Whether such was the real object and intention of those who voted for the bill, I know not, but such would be its undeniable effect if sustained and enforced. A man over fifty years of age, with half a dozen sons in the field, who has done everything in his power for the cause from the beginning of the war, may, under instructions from the Secretary of War, be arrested by the sub-enrolling officer and ordered to camp, upon the assumed ground that, in point of fact, he is under fifty Under this law, if it be a law, he would be without remedy or redress. A case to illustrate by occurred within my own knowledge last fall. Orders were issued to examine the census returns of 1860, as to the ages of persons, and instructions given to sub-enrolling officers to be governed as to the age of parties by those returns. In the case alluded to by the census returns, the party was not forty-five at the time of arrest. He protested that he had not made the census returns himself—that the return was erroneous, it was not given under oath—that he was able to prove by evidence entirely satisfactory, that he was over forty-five and not liable under the law, as it then stood, to military service. His privilege of the writ of habeas corpus—his right to have this question of fact and law settled by the courts, was not then suspended, and he was discharged. But what would be his situation, and that of all others in like circumstances, if this act be held to be law? It is said that the act affects none but the disloyal, and that no good law-abiding man can justly complain of it! As I view it, its main effect is to close the doors of justice against thousands of citizens, good and true, who may appeal to the courts for their legal rights. Take the case of those

who availed themselves of the law to put in substitutes—some for one motive, and some for another—some, doubtless, for not only good but patriotic motives, believing that they could render the country more service at home than in the field. I know one who has put in two, one when the call was for those up to thirty-five years of age, the other when the call was to forty-five. One of these substitutes was an alien, whose services could not have been commanded by the government, and who is now at Charleston, and has been during the whole siege of that place. This man who put in these two substitutes, remained at home most usefully employed in producing provisions for the army. All his surplus went that way, while he had two men, abler bodied than he was, fighting for him in the field. Who would say that such a man is disloyal to the cause, if, believing in his heart that he was not liable under his contract, as he supposed, with his government, he should appeal to the courts to decide the question whether he is liable under the law or not? As to the law allowing substitutes in the first instance, and then the law abrogating or annulling it, and calling the principals into the field, I have nothing to say. What I maintain is, that it is the great constitutional right of any and every party affected by the last of these acts on the subject, to have the question of his legal liability judicially determined if he chooses, and then as a good law-abiding citizen act accordingly.

Take another illustration of the practical workings of the act.—Congress by law exempted from conscription such State officers as the Legislatures of the respective States might designate as proper to be retained for State purposes. At your last session you, by resolution, designated all the civil and militia officers of the State. A late order has been issued by Gen. Cooper, as is seen in the papers, doubtless under order from the Secretary of War, to enroll and send to camp a large number of these officers—amongst others, justices of the peace, tax receivers and collectors. This order is clearly against the law of Congress and your solemn resolution. It is in direct antagonism to the decision of the Supreme Court of this State, in the very case in which they sustained the power of Congress to raise troops by conscription, but in which they held that the power was limited, and that the civil officers of the State could not be constitutionally conscripted. I use the word conscripted purposely—I know there is no such word in the English language—neither is there any such word as conscribe, the one usually in vogue now a days. A new word had to be coined for a process or mode of raising armies, unheard of and undreamed of by our ancestors, and I choose to coin one which best expresses my idea of it. But under this order of General Cooper, is it not the right of these officers, is it not the right of the State, to have the question of their liability to conscription determined by the judiciary? Is it not the duty of Congress to compel the Secretary of War and General Cooper to abide by that decision and to obey their own laws, instead of attempting to close the doors of the courts against the adjudication of all such matters that come within the sphere of their constitutional duties.

Again, Congress, by the last section of the first conscript act, declared that all who were or should be subject to it might, previous to enrollment, volunteer in any company then in the service. Notwithstanding this express law of Congress, securing the right of any person liable to conscription to volunteer in any company then in the service previous to enrollment, General Cooper has issued an order by direction of the Secretary of War, doubtless, denying this right to volunteer in any company then in existence, unless the number in such company is less than sixty-four men. Under this illegal order a number of as brave, gallant, chivalrous, noble spirited youths as ever went forth to battle for their country and peril their lives for constitutional liberty, will be deprived of their birth right—the right to have questions of law, affecting their liberty, determined by the courts—if this act, closing the court against them, shall be held to be valid. Tell me not the act affects none but traitors, spies, and the disloyal! I heard not long since in Albany, a father carried his son to the district enrolling officer; he had just arrived at the age when he was liable to conscription; he never wished him to go to the war as a conscript. His older brothers had gone before him, they went out early in the war as volunteers, and they formed part of that living wall of freemen which still stands between us and a ruthless foe. He told the enrolling officer, in substance, that he had brought this boy, the Benjamin of his heart, as another offering on the altar of his country. He was going as a volunteer under the clause of the act alluded to; he had selected the company to which his brothers belonged. He was told this could not be allowed. At this the father was greatly surprised and mortified, as may be readily understood; he insisted upon the rights of his son. Great as his surprise was at first, however, greater was it still to be. The son was ordered to jail, to be sent to the camp of instruction, to be assigned to any company his officers might choose. The high spirited youth, scorning conscription, offering himself as a volunteer, asking nothing but his legal rights, instead of being sent on with cheers by the crowd, and a father's parting blessing, was sent to jail as a felon!

Can any one say that this was not a most shameful outrage?

It is, however, but one of a thousand cases like it that may occur, and probably will occur, should this law be held to be constitutional; and if the doors of the courts are to be closed against all who may be ordered to the military service, without regard to law, I have here two letters which will further illustrate how this act will work. They are both addressed to the Governor. One is from a Mr. Samuel H. Parker, written in Charleston jail. [Here Mr. S. read the letter, stating that the writer was a native Georgian. That he lived in Whitfield county. That he was forty-seven years of age, as the record would show, then in Whitfield county. That he was at his home with his wife, (who was then sick,) with ten small children, on the 27th of February, of this year, when a party on horses came and arrested him, and carried him to Dalton. And from Dalton he was carried to

Atlanta. He protested that he was over age, and not liable to military duty—that he was forty-seven years old. He was told that that was the right age to make a soldier in South Carolina, and he was sent to Charleston, where he was put in jail. He appealed to the Governor of his native State, and the State of his residence, to have justice done him.] Of this Mr. Parker, said Mr. S., I know nothing except what is stated in this letter. It may be false, and yet it may be true. If true, justice ought to be done to a man so greatly outraged and wronged. But whether true or false, the courts ought never to be closed against an inquiry into the facts, and never will be, so long as personal security has any protection in this country.

The other letter is from the Hon. John Oats, a member of this House, from the county of Murray. It is dated the 11th of this month, the day after the meeting of this session. [Here Mr. S. read Mr. Oats' letter, stating that he was detained at Atlanta under very painful circumstances. His oldest son, who had been in the army, was subject to epilepsy, and had been discharged in consequence.—That afterwards he had been carried before a board of physicians, who pronounced his case incurable, and he was given a certificate of final discharge, on the grounds of permanent disability. That on the morning Mr. Oats left home for Milledgeville, the provost guard at Dalton went to his house, at Spring Place, and carried his son off to Dalton. They carried him from there to Cartersville to Capt. Starr, the enrolling officer for the 10th Congressional District, and he, knowing all about his case, sent him back to Dalton, stating in writing on the order that he was sent there under, that according to law, and his orders from the War Department, he was not liable to conscription. That on his return to Dalton they put him in irons and assigned him to Charleston, to go into the fortifications, and that he expected him in Atlanta that evening. He was waiting with the best counsel he could get, to see if there was any virtue in the writ of habeas corpus. He asked that the Governor would get some member to procure for him leave of absence from the House.]

Well, for Mr. Oats, said Mr. Stephens, and his afflicted son, there is some virtue yet in the writ of habeas corpus.

But what virtue would be in it, if it is denied under this act, to all who attempt to avoid military service? Nothing could induce me to read such letters on such an occasion, but a sense of duty, to show you what will be the state of things all over the country, under the operations of such a law, when orders are issued for its enforcement, and to put you on your guard against the flippant phrase that the act will affect none but traitors, spies and disloyal people. Had it been in operation, and the courts regarded it, Mr. Oats' son, who had served his country faithfully, as long as he was able, might now have been beyond remedy, beyond redress and beyond hope. Will you say, can you say, that the courts ought to be, or can be closed against such monstrous wrongs? Will you not rather put upon the attempt to do it the seal of your unqualified condemnation? Tell me not, to

put confidence in the President That he will never abuse the power attempted to be lodged in his hands. The abuses may not be by the President. He will not execute the military orders that will be given. This will necessarily devolve upon subordinates, scattered all over the country, from the Potomac to the Rio Grande. He would have to possess two superhuman attributes, to prevent abuses—omniscience, and omnipresence!

These things our forefathers knew, and hence they threw around the personal security of the free citizens of this country a firmer, safer, surer protection than confidence in any man, against abuses of power, even when exercised under his own eye and by himself. That protection is the shield of the Constitution. See to it that you do not in an evil hour tear this shield off and cast it away, or permit others to do it, lest in a day you wot not of you sorely repent it.

Enough has been said, without dwelling longer upon this point, to show, without the possibility of a doubt, that the act does affect others, and large classes of others than spies, traitors, bridge burners and disloyal persons—that the very gist of the act, whatever may have been the intent or the motive, will operate most wrongfully and oppressive on as loyal, as patriotic, and as true men as ever inherited a freeman's birthright under a Southern sky. You have also seen that there is and can be no necessity for the passage of such an act, even if it were constitutional, in the case of spies, traitors or conspirators. For, if there be a traitor in the Confederacy—if such a monster exists—if any well grounded suspicion is entertained that any such exists, why not have him legally arrested by judicial warrant upon oath or affirmation, setting forth probable cause, and then he can be held under a constitutional suspension of the privileges of the writ—he can be tried, and, if found guilty, punished. What more can the public safety by possibility require? Why dispense with the oath? Why dispense with judicial warrants? Why put it in the power of any man on earth to order the arrest of another on a simple charge, to which nobody will swear? Who is safe under such a law? Who knows, when he goes forth, when or whether he shall ever return? The President, according to this act, is to have power to arrest and imprison whoever he pleases, upon a bare charge, made, perhaps, by an enemy of disloyalty. The party making the charge not being required to swear to it! Who, I repeat, is safe or would be under such a law? What were the objects of the act, in these clauses, as to treason, disloyalty, and the others, I do not know. To me it seems to be unreasonable to suppose that it was to reach real traitors and persons guilty of the offenses stated. For that object could have been easily accomplished without any such extraordinary power. I was not at Richmond when the act passed. I heard none of the discussions, and knew none of the reasons assigned by the President in asking it, or the members or Senators who voted for it. I was at home, prostrate with disease, from which I have not yet recovered; and by reason of which I address you with so much feebleness on this occasion. But

I have heard that one object was to control certain elections and expected assemblages in North Carolina, to put a muzzle upon certain presses and a bit in the mouth of certain speakers in that State. If this be so, I regard it the more dangerous to public liberty. I know nothing of the politics of North Carolina—nothing of the position of her leading public men. If there be traitors there, let them be constitutionally arrested, tried and punished. No fears need be indulged of bare error there, or anywhere else, if reason is left free to combat it. The idea is incredible, that a majority of the people of that gallant and noble old State, which was foremost in the war of the revolution in her memorable Mecklenburg declaration of independence can, if let alone, ever be induced to prove themselves so recreant to the principles of their fathers as to abandon our cause and espouse the despotism of the North. Her people, ahead of all the Colonels, first flaunted in the breeze the flag of Independence and State Sovereignty. She cannot be the first to abandon it—no, never! I cannot believe it! If her people were really so inclined, however, we could not prevent it by force—we could not, under the Constitution, if we would, and we ought not if we could. Ours is a government founded upon the consent of sovereign States, and will be itself destroyed by the very act whenever it attempts to maintain or perpetuate its existence by force over its respective members. The surest way to check any inclination in North Carolina to quit our sisterhood, if any such really exist even to the most limited extent among her people, is to show them that the struggle is continued, as it was begun, for the maintenance of constitutional liberty. If, with this great truth ever before them, a majority of her people should prefer despotism to liberty, I would say to her, as to "a wayward sister, depart in peace." I want to see no Maryland this side of the Potomac.

Another serious objection to the measure, showing its impolicy, is the effect it will have upon our cause abroad. I have never looked to foreign intervention, or early recognition, and do not now. European governments have no sympathy with either side in this struggle. They are rejoiced to see professed republicans cutting each other's throats, and the failure, as they think, of the great experiment of self-government on this continent. They saw that the North went into despotism immediately on the separation of the South, and their fondest hopes and expectations are that the same destiny awaits us. This has usually been the fate of republics. This is the sentiment of all the governments in Europe. But we have friends there, as you heard last night, in the eloquent remarks of the gentleman [Hon. L. Q. C. Lamar] who addressed you on our foreign relations, and who has lately returned from those countries. Those friends are anxiously and hopefully watching the issue of the present conflict. In speeches, papers and reviews they are defending our cause No argument used by them heretofore has been more effectual than the contrast drawn between the Federals and the Confederates upon the subject of the writ of habeas corpus. Here, notwithstanding our dangers

and perils, the military has always been kept subordinate to the civil authorities. Here all the landmarks of English liberty have been preserved and maintained, while at the North not a vestige of them if left. There, instead of courts of justice with open doors, the country is dotted all over with prisons and bastiles. No better argument in behalf of a people struggling for constitutional liberty could have been presented to arouse sympathy in our favor. It showed that we were passing through a fiery furnace for a great cause, and passing through unscathed. It showed that, whatever may be the state of things at the North, at the South, at least, the great light of the principles of self-government, civil and religious liberty, established on this continent by our ancestors, which was looked to with encouragement and hope by the down-trodden of all nations, was not yet extinguished, but was still burning brightly in the hands of their Southern sons, even burning the more brightly from the intensity of the conflict in which we are engaged. To us, in deed and in truth, is committed the hopes of the world as to the capacity and ability of man for self-government. Let us see to it that these hopes and expectations do not fail. Let us prove ourselves equal to the high mission before us.

One other only that relates to the particularly dangerous tendency of this Act in the present state of the country, and the policy indicated by Congress. Conscription has been extended to embrace all between seventeen and fifty years of age. It cannot be possible that the intention and object of that measure was really to call and keep in the field all between those ages. The folly and ruinous consequence of such a policy is too apparent. Details are to be made, and must be made, to a large extent. The effect and object of this measure, therefore, was not to raise armies or procure soldiers, but to put all the population of the country between those ages under military law. Whatever the object was, the effect is to put much the larger portion of the labor of the country, both white and slave, under the complete control of the President. Under this system almost all the useful and necessary occupations of life will be completely under the control of one man. No one between the ages of seventeen and fifty can tan your leather, make your shoes, grind your grain, shoe your horse, lay your plough, make your wagon, repair your harness, superintend your farm, procure your salt, or perform any other of the necessary vocations of life, (except teachers, preachers and physicians, and a very few others) without permission from the President. This is certainly an extraordinary and a dangerous power. In this connection take in view this habeas corpus suspension act, by which it has been shown the attempt is made to confer upon him the power to order the arrest and imprisonment of any man, woman or child in the Confederacy on the bare charge, unsupported by oath, or any of the acts for which arrests are allowed to be made. Could the whole country be more completely under the power and control of one man, except as to life and limb? Could dictatorial power be more complete? In this connection consider, also, the strong appeals that

have been made for some time past, by leading journals, openly for a dictator. Coming events often cast their shadows before. Could art or ingenuity have devised a shorter or a surer cut to that end, for all practical purposes, than the whole policy adopted by the last Congress, and now before you for consideration? As to the objects, or motives, or patriotism of those who adopted that policy, that is not the question. The presentation of the case as it stands is what your attention is called to. Nor is the probability of the abuse of the power the question. Some, doubtless, think it is for the best interests of the country to have a dictator? Such are not unfrequently to be met with whose intelligence, probity and general good character in private life are not to be questioned, however much their wisdom, judgment and principles may be deplored. In such times, when considering the facts as they exist, and looking at the policy indicated in all its bearings, the most ill-timed, delusive and dangerous words that can be uttered are, can you not trust the President? Have you not confidence in him that he will not abuse the powers thus confided in him? To all such questions my answer is, without any reflection or imputation against our present Chief Magistrate, that the measure of my confidence in him, and all other public officers, is the Constitution. To the question of whether I would not or cannot trust him with these high powers not conferred by the constitution my answer is the same that I gave to one who submitted a plan for a dictatorship to me some months ago: "I am utterly opposed to everything looking to or tending towards a dictatorship in this country. Language would fail to give utterance to my inexpressible repugnance at the bare suggestion of such a lamentable catastrophe. There is no man living, and not one of the illustrious dead, whom, if now living, I would so trust."

In any and every view, therefore, I look upon this habeas corpus suspension act as unwise, impolitic, unconstitutional and dangerous to public liberty.

But you have been asked what can you do? Do? You can do much. If you believe the act to be unconstitutional, you can and ought so to declare your judgment to be.

What can you do? What did Virginia and Kentucky do in 1797–'98, under similar circumstances? What did Jefferson do, and what did Madison do, and what did the legislators of those States then do?

Though a war was then threatening with France—though armies were being raised—though Washington was called from his retirement to take command as lieutenant-general—though it was said then as now, that all discussions of even obnoxious measures of Congress would be hurtful to the public cause, they did not hesitate, by solemn resolves by the Legislatures, to declare the alien and sedition laws unconstitutional and utterly void. Those acts of Congress, in my judgment, were not more clearly unconstitutional, or more dangerous to liberty, than this act now under review. What can you do? You can invoke its repeal, and ask the government officials and

the people in the meantime, to let the question of constitutionality be submitted to the courts, and both sides abide by the decision

Some seem to be of the opinion, that those who oppose this act are for a counter-revolution. No such thing. I am for no counter-revolution. The object is to keep the present one, great in its aims and grand in its purposes, upon the right tract—the one on which it was started, and that on which alone it can attain noble objects and majestic achievements. The surest way to prevent a counter-revolution, is for the State to speak out and declare her opinions upon this subject. For as certain as day succeeds night, the people of this Confederacy will never live long in peace and quiet under any government with the principles of this act settled as its established policy, and held to be in conformity with the provisions of its fundamental law. The action of the Virginia Legislature in 1779, saved the old government beyond question, from a counter and bloody revolution; kept it on the right track for sixty years afterwards, in its unparalleled career of growth, prosperity, development, progress, happiness, and renown. All our present troubles, North and South, sprang from violations of those great constitutional principles therin set forth.

Let no one, therefore, be deterred from performing his duty on this occasion by the cry of counter-revolution, nor by the cry that it is the duty of all, in this hour of peril, to support the government.—Our government is composed of executive, legislative and judicial departments, under the Constitution. He most truly and faithfully supports the government who supports and defends the Constitution. Be not misled by this cry, or that you must not say anything against the administration, or you will injure the cause. This is the argument of the preacher, who doubted that his derelictions should not be exposed, because if they were, it would injure his usefulness as a minister. Derelict ministers are not the cause Listen to no such cry. And let no one be influenced by that other cry, of the bad effect of such discussions and such action will have upon our gallant citizen soldiers in the field. I know something of the feeling of these men. I have witnessed their hardships, their privations and their discomforts in camp. I have witnessed and ministered to their wants and sufferings from disease and wounds in hospitals.

I know something of the sentiments that actuated the great majority of them, when they quit home, with all its endearments, and went out to this war—not as mercenaries or human machines, but as intelligent, high-minded, noble-spirited gentlemen, who were proud of their birthright as freemen, and "who, knowing their rights," dared maintain them, at any and every cost and sacrifice. The old Barons who extorted magna charta from their oppressor and wrong-doer by a resort to arms, did not present a grander spectacle for the admiration of the world when they went forth to their work, thoroughly imbued with a sense of the right for the right's sake, than this gallant band of patriots did when they went forth in this war, inspired with no

motive but a thorough devotion to and an ardent attachment for constitutional liberty To defend this and maintain it inviolate for themselves and those who should come after them, was their sole object. Their ancient rights, usages, institutions and liberties were threatened by an insolent foe, who had trampled the Constitution of our common ancestors under foot. They and we all had quit the Union when the rights of all of us were no longer respected under it, but we had rescued the Constitution—the ark of the covenant—and this is what they went to defend. These were the sentiments with which your armies were raised as if by magic. These are the sentiments with which re-enlistments for the war have been made. These are the sentiments with which your ranks would have been filled to the last man whose services can be relied upon in action if conscription had never been resorted to.

You cannot, therefore, send these gallant defenders of constitutional liberty a more cheering message than that, while they are battling for their rights and the common rights of all in the field, you are keeping sacred watch and guard over the same in the public councils. They will enter the fight with renewed vigor from the assurance that their toil, and sacrifice, and blood will not be in vain, but that when the strife is over and independence is acknowledged, it will not be a bare name, a shadow and a mockery, but that with it they and their children after them shall enjoy that liberty for which they now peril all. Next to this, the most encouraging message you could send them is, that while all feel that the brunt of the fight must be borne by them, and the only sure hope of success is in the power of their arms, yet every possible and honorable effort will be made by the civil departments of the government to terminate the struggle by negotiation and adjustment upon the principles for which they entered the contest.

Gentlemen, I have addressed you longer than I expected to be able to do. My strength will not allow me to say more. I do not know that I shall ever address you again, or see you again. Great events have passed since, standing in this place three years ago, I addressed your predecessors, on a similar request, upon the questions then immediately pending our present troubles. Many who were then with us have since passed away. Some in the ordinary course of life, while many of them have fallen upon the battle-field, offering up their lives in the great cause in which we are engaged. Still greater events may be just ahead of us. What fate or fortune awaits you or me, in the contingencies of the times, is unknown to us all. We may meet again, or we may not. But as a parting remembrance, a lasting memento, to be engraven on your memories and your hearts, I warn you against that most insidious enemy which approaches with her syren song—"Independence first and liberty afterwards." It is a false delusion. Liberty is the animating spirit, the soul of our system of government, and like the soul of man, when once lost, it is lost forever. There is for it no redemption except through blood. Never

for a moment permit yourselves to look upon liberty, that constitutional liberty which you inherited as a birthright, as subordinate to independence. The one was resorted to to save the other. Let them ever be held and cherished as objects co-ordinate, co-existent, co-equal, co-eval and forever inseparable. Let them stand together "through weal and through woe," and, if such be our fate, let them and us all go down together in a common ruin. Without liberty I would not turn upon my heel for independence. I scorn all independence which does not secure liberty. I warn you also against another fatal delusion, commonly dressed up in the fascinating language of "If we are to have a master, who would not perfer to have a Southern one to a Northern one?" Use no such language. Countenance none such. Evil communications are as corrupting in politics as in morals.

> "Vice is a monster of such hideous mien,
> That to be hated, needs but to be seen.
> But seen too oft, familiar with her face,
> We first endure, then pity, then embrace."

I would not turn upon my heel to choose between masters. I was not born to have a master from either the North or South. I shall never choose between candidates for that office. Shall never degrade the right of suffrage in such an election. I have no wish or desire to live after the degradation of my country, and have no intention to survive its liberties, if life be the necessary sacrifice of their maintenance to the utmost of my ability, to the bitter end. As for myself, give me liberty as secured in the Constitution with all its guaranties, among which is the sovereignty of Georgia, or give me death. This is my motto, while living, and I want no better epitaph, when I am dead.

Senators and Representatives: the honor, the rights, the dignity, the glory of Georgia is in your hands. See to it as faithful sentinels upon the watchtower, that no harm or detriment come to any of those high and sacred trusts, while committed to your charge. [Immense cheers and applause.]

EXTRACTS FROM THE MESSAGE OF GOV. BROWN.

THE CURRENCY.

The late action of the Congress of the Confederate States upon the subject of the currency has rendered further legislation necessary in this State upon that question. It cannot be denied that this act has seriously embarrassed the financial s stem of this State, and has shaken the confidence of our people in either the justice of the late Congress or its competency to manage our financial affairs.—Probably the history of the past furnishes few more striking instances of unsound policy combined with bad faith.

The government issues its Treasury note for $100, and binds itself two years after a treaty of peace between the Confederate States and the United States, to pay the bearer that sum; and stipulates upon the face of the note that it is fundable in Confederate States stocks or bonds, and receivable in payment of all public dues except export duties. The Congress, while the war is still progressing, passes a statute that this bill shall be funded in about forty days or one-third of it shall be

repudiated, and that a tax of ten per cent a month shall be paid for it after that time by the holder, and it shall no longer be receivable in payment of public dues, and if it is not funded by the 1st of January next the whole debt is repudiated.—Did the holder take the note with any such expectation? Was this the contract, and is this the way the government is to keep its faith? If we get rid of the old issues in this way what guaranty do we give for better faith in the redemption of the next issues? Again, many of the notes have the express promise on their face that they shall be funded in eight per cent bonds. When? The plain import is, and so understood by all at the time of their issue, that it may be done at any time before the day fixed on the face of the note for its payment. With what semblance of good faith then does the government before that time compel the holder to receive a four per cent bond, or lose the whole debt? and what better is this than repudiation? When was it ever before attempted by any government to compel the funding of almost the entire paper currency of a country amounting to seven or eight hundred millions of dollars in forty days? This is certainly a new chapter in financiering.

The country expected the imposition of a heavy tax, and all patriotic citizens were prepared to pay it cheerfully at any reasonable sacrifice; but repudiation and bad faith were not expected, and the authors of it cannot be held guiltless.

The expiring Congress took the precaution to discuss the measure in secret session; so that the individual act of the representative could not reach his constituents, and none could be annoyed during its consideration by the murmurs of public disapprobation being echoed back into the Legislative Hall. And to make assurance doubly sure, they fixed the day for assembling of their successors, at a time too late to remedy the evil, or afford adequate redress for the wrong.

These secret sessions of Congress are becoming a blighted curse to the country. They are used as a convenient mode of covering up from the people, such acts or expressions of their representatives as will not bear investigation in the light of day. Almost every act of usurpation of power, or of bad faith, has been conceived, brought forth and nurtured, in secret session. If I mistake not the British Parliament never discussed a single measure in secret session during the whole period of the Crimean War. But if it is necessary to discuss a few important military measures, such as may relate to the movement of armies, &c., in secret session, it does not follow that discussions of questions pertaining to the currency, the suspension of the writ of habeas corpus, and the like, should all be conducted in secret session. The people should require all such measures to be discussed with open doors, and the press should have the liberty of reporting and freely criticising the acts of our public servants. In this way the reflection of the popular will back upon the representatives, would generally cause the defeat of such unsound measures, as those which are fastened upon the country in defiance of the will of the people.

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SUSPENSION OF THE HABEAS CORPUS.

I cannot withhold the expression of the deep mortification I feel at the late action of Congress in attempting to suspend the privilege of the writ of habeas corpus, and to confer upon the President powers expressly denied to him by the Constitution of the Confederate States. Under pretext of a necessity which our whole people know does not exist in this case, whatever may have been the motives, our Congress, with the assent and at the request of the Executive, has struck a fell blow at the liberties of the people of these States.

The Constitution of the Confederate States declares that "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." The power to suspend the habeas corpus at all is derived, not from express and direct delegation, but from implication only, and an implication can never be raised in opposition to an express restriction. In case of any conflict between the two, an implied power must always yield to express restrictions upon its exercise. The power to suspend the privilege of the writ of habeas corpus derived by implication must, therefore be always limited by the express declaration in the Constitution that:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," and the further declaration that "no person shall be deprived of life, liberty or property, without due process of law." And that,

"In all criminal prosecutions the accuser shall enjoy the right of a speedy and

public trial by an impartial jury of the State or District where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and the cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence."

Thus it is an express guaranty of the Constitution that the "persons" of the people shall be secure, and "no warrants shall issue but upon probable cause, supported by oath or affirmation," particularly describing "the persons to be seized;" that "no person shall be deprived of liberty without due process of law," and that in "all criminal prosecutions the accused shall enjoy the right of a special and public trial by an impartial jury."

The Constitution also defines the powers of the Executive, which are limited to those delegated, among which there is no one, authorizing him to issue warrants or other arrests of persons not in actual military service; or to sit as a judge in any case, to try any person for a criminal offense, or to appoint any court or tribunal to do it, not provided for in the Constitution as part of the judiciary. The power to issue warrants and try persons under criminal accusations are judicial powers which belong under the Constitution, exclusively to the judiciary and not to the Executive. His power to order arrests as Commander-in-Chief is strictly a military power, and is confined to the arrests of persons subject to military power, as to the arrests of person in the army or navy of the Confederate States; or in the militia, when in the actual service of the Confederate States, and does not extend to any persons in civil life, unless they be followers of the camp or within the lines of the army. This is clear from that provision of the Constitution which declares that,

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentiment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger." But even here the power of the President as Commander-in-Chief is not absolute, as his powers and duties in ordering arrests of persons in the land or naval forces, or in the militia when in actual service, are clearly defined by the rules and articles of war prescribed by Congress. Any warrant issued by the President, or any arrest made by him or under his order, of any person in civil life, and not subject to military command, is illegal and in plain violation of the Constitution; as it is impossible for Congress by implication to confer upon the President the right to exercise powers of arrests, expressly forbidden to him by the Constitution. An effort on the part of Congress to do this is but an attempt to revive the odious practice of ordering political arrests, or issuing letters *de cachet* by royal prerogative so long since renounced by our English ancestors, and the denial of the right of the constitutional judiciary to investigate such cases, and the provision for creating a court appointed by the Executive and changeable at his will, to take jurisdiction of the same, and are in violation of the great principles of Magna Charta, the Bill of Rights, the *habeas corpus* act, and the Constitution of the Confederate States, upon which both English and American liberty rest; and are but an attempt to revive the odious Star Chamber court of England, which in the hands of wicked kings was used for tyrannical purposes by the crown until it was finally abolished by acts of Parliament, of 16th Charles the first, which went into operation on the 1st of August, 1641. This act has ever since been regarded as one of the great bulwarks of English liberty; and as it was passed by the English Parliament to secure our English ancestors against the very same character of arbitrary arrests which the late act of Congress is intended to authorize the President to make, I append a copy of it to this message, with the same italics and small capital letters which are used in the printed copy in the book from which it is taken. It will be seen that the court of the "Star Chamber," which was the instrument in the hands of the English king, for investigating his illegal arrests and carrying out his arbitrary decrees, was much more respectable on account of the character, learning and ability of its members than the Confederate Star-Chamber or court of "proper officers," which the act of Congress gives the President power to appoint to investigate his illegal arrests.

I am aware of no instance in which the British king has ordered the arrest of any person in civil life, in any other manner than by judicial warrant, issued by the established court of the realm; or in which he has suspended or attempted to suspend the privilege of the writ of habeas corpus, since the Bill of Rights and act of settlement passed in 1689. To attempt this in 1864 would cost the present reigning Queen no less price than her crown.

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By an examination of the act of Congress now under consideration, it will be seen that it is not an act to suspend the privilege of the writ of habeas co pus in case of warrant issues by judicial authority; but the main purpose of the act seems to be to authorize the President to issue warrants supported by neither oath nor affirmation and to make arrests of persons not in military service, upon charges of a nature proper for investigation in the judicial tribunals only, and to prevent the Courts from enquiring into such arrests, or granting relief against such illegal usurpations of power, which are in direct and palpable violation of the Constitution

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This then is not an act to suspend the privilege of the writ of habeas corpus, in the manner authorized by implication by the Constitution; but it is an act to authorize the President to make illegal and unconstitutional arrests, in cases which the Constitution gives to the judiciary, and denies to the Executive; and to prohibit all judicial interference for the relief of the citizen, when tyrannized over by illegal arrest, under letters *de cachet* issued by Executive authority.

Instead of the legality of the arrest being examined in the judicial tribunals appointed by the Constitution, it is to be examined in the Confederate Star-Chamber; that is, by officers appointed by the President. Why say that the "President shall cause proper officers to investigate", the legality of arrests made by him? Why not permit the judges, whose constitutional right and duty it is to do it?

We are witnessing with too much indifference assumptions of power by the Confederate government which in ordinary times would arouse the whole country to indignant rebuke and stern resistance. History teaches us that submission to one encroachment upon constitutional liberty is always followed by another, and we should not forget that important rights, yielded to those in power without rebuke or protest, are never recovered by the people without revolution.

If this act is acquiesced in, the President, the Secretary of War, and the commander of the Trans Mississippi department under the control of the President, each has the power conferred by Congress, to imprison whomsoever he chooses; and it is only necessary to allege that it is done on account of "treasonable efforts" or of "conspiracies to resist the lawful authority of the Confederate States," or for "giving aid and comfort to the enemy," or other of the causes of arrest enumerated in the statute, and have a subaltern to file his affidavit accordingly, after the arrest if a writ of habeas corpus is sued out, and no Court dare inquire into the cause of the imprisonment. The statute makes the President and not the courts the judge of the sufficiency of the cause for his own acts. Either of you or any other citizen of Georgia, may, at any moment, (as Mr. Vallandigham was in Ohio,) be dragged from your homes at midnight by armed force, and imprisoned at the will of the President, upon the pretext that you have been guilty of some offense of the character above named, and no court known to our judiciary, can inquire into the wrong or grant relief.

When such bold strides towards military despotism and absolute authority are taken by those in whom we have confided, and who have been placed in high official position, to guard and protect constitutional and personal liberty, it is the duty of every patriotic citizen to sound the alarm, and of the State Legislatures to say in thunder-tones, to those who assume to govern us by absolute power, that there is a point beyond which freemen will not permit encrachments to go.

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Can the President no longer trust the judiciary with the exercise of the legitimate powers conferred upon it by the Constitution and laws? In what instance have the grave and dignified Judges proved disloyal or untrue to our cause?—When have they embarrassed the government by turning loose traitors, skulkers or spies? Have they not in every instance given the government the benefit of their doubts in sustaining its action, though they might thereby seem to encroach upon the rights of the States, and for a time deny substantial justice to the people? Then why this implied censure upon them?

What justification exists now for this most monstrous deed, which did not exist during the first or second year of the war, unless it be found in the fact that those in power have found the people ready to submit to every encroachment rather than make an issue with the government, while we are at war with the enemy, and have on that account been emboldened to take the step which is intended to make the President as absolute in his power of arrest and imprisonment as the

Czar of all the Russians? What reception would the members of Congress from the States have met in 1861, had they returned to their constituents and informed them that they had suspended the habeas corpus and given the President the power to imprison the people of these States with no restraint upon his sovereign will? Why is liberty less sacred now than it was in 1861? And what will we have gained when we have achieved our independence of the Northern States, if in our effort to do so we have permitted our form of government to be subverted, and have lost Constitutional liberty at home?

The hope of the country now rests in the new Congress soon to assemble. They must maintain our liberties against encroachment and wipe this and all such stains from the statute book, or the Sun of Liberty will soon set in darkness and blood.

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HOW PEACE SHOULD BE SOUGHT.

In view of these difficulties it may be asked—When and how is this war to terminate? It is impossible to say when it may terminate, but it is easy to say how it will end. We do not seek to conquer the Northern people, and if we are true to ourselves they can never conquer us. We do not seek to take from them the right of self government, or to govern them without their consent; and they have not force enough to govern us without our consent, or to deprive us of the right to govern ourselves. The blood of hundreds of thousands may yet be spilt and the war will not still be terminated by force of arms. Negotiation *will* finally terminate it. The pen of the statesman, more potent than the sword of the warrior, must do what the latter has failed to do.

But I may be asked how negotiations are to commence, when President Lincoln refuses to receive commissioners sent by us and his Congress resolves to hear no proposition for peace. I reply that, in my opinion, it is our duty to keep it always before the Northern people and the civilized world, that we are ready to negotiate for peace whenever the people and government of the Northern States are prepared to recognize the great fundamental principles of the Declarationn of Independence, maintained by our common ancestry—the right of all self-government, and the sovereignty of the States. In my judgment, it is the duty of our government, after each important victory, achieved by our gallant and glorious armies on the battle-field, to make a distinct proposition to the Northern government for a peace upon these terms. By doing this, if the proposition is declined by them, we will hold them up constantly in the wrong, before their own people and the judgment of mankind.

If they refuse to receive the commissioners who bear the proposition, publish it in the newspapers, and let the conduct of their rulers be known to the people; and there is reasonable ground to hope that the time may not be far distant when a returning sense of justice, and a desire for self-protection against despotism at home, will prompt the people of the Northern States to hurl from power those who deny the fundamental principle, upon which their own liberties rests, and who can never be satiated with human blood. Let us stand on no delicate point of etiquette or diplomatic ceremony. If the proposition is rejected a dozen times, let us tender it again after the next victory—that the world may be reassured, from mouth to month, that we are not responsible for the continuance of this devastation and carnage.

Let it be repeated again and again, to the Northern people, that all we ask is that they recognize the great principle upon which their own government rests—*the sovereignty of the States;* and let our own people hold our own government to a strict account for every encroachment upon this vital principle.

Herein lies the simple solution of all these troubles.

If there be any doubt, or any question of doubt, as to the sovereign will of any one of all the States of this Confederacy, or of any border State, whose institutions are similar to ours, not in the Confederacy, upon the subject of their present or future alliance, let all armed force be withdrawn, and let that sovereign will be fairly expressed at the ballot-box by the legal voters of the States, and let all parties abide by the decision.

Let each State have and freely exercise the right to determine its own destiny, in its own way. This is all that we have been struggling for from the beginning. It is a principle that secures "rights inestimable to freemen and formidable to tyrants only."

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JOSEPH E. BROWN.